

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

IN THE MATTER OF:

**EAST VALLEY WATER DISTRICT
1155 DEL ROSA AVENUE
SAN BERNARDINO, CALIFORNIA
92413**

**COMPLAINT NO. 98-91
FOR
ADMINISTRATIVE CIVIL LIABILITY**

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The East Valley Water District (hereinafter EVWD) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability pursuant to Section 13385 (c) (2) of the California Water Code (Water Code).
2. A hearing concerning this complaint will be held before the Board within 60 days of the date of issuance of this complaint, unless EVWD waives its right to a hearing. Waiver procedures are specified on page 5 of the complaint. If the hearing in this matter is not waived, it will be held during the Board's regular meeting on October 9, 1998 at the City Council Chambers of Newport Beach, CA. The meeting begins at 9:30 a.m. EVWD or its representative will have an opportunity to appear and be heard and to contest the allegations in this complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date.
3. If the October 9, 1998 hearing is held, the Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. EVWD is alleged to have violated California Water Code Section 13376 by discharging pollutants into navigable waters of the United States that are within the State's jurisdiction without having filed a report of the discharge and without having obtained waste discharge requirements adopted by the Board.

5. This complaint is based on the following facts:
- A) The East Valley Water District (EVWD) owns and operates a sewerage system in the City of Highland, California that includes the 18-inch gravity sewer pipeline in Sterling Avenue. This gravity sewer pipeline crosses beneath Warm Creek, a flood control channel and major tributary to the Santa Ana River, within the right of way of Sterling Avenue between the intersecting streets of 13th Street and Jane Street.
 - B) On March 4, 1998, EVWD discovered sewage spilling into Warm Creek from a break in the Sterling Avenue sewer pipeline beneath the roadway bridge. The break was caused by the combination of exposure of the buried pipeline, due to the erosion of the surrounding protective layer of sand, and a boulder striking the exposed pipeline as the boulder was being pushed along the Creek by the high flows during the rainstorms of February 22, 23, and 24, 1998.
 - C) Sewage most likely began to be discharged to Warm Creek some time on February 23, 1998 (the most likely date considering peak flows in the Creek during the storm), and continued until the discovery of the spill on March 4, 1998, a nine day period. A sewage flow study conducted by EVWD established an average daily flow for the Sterling Avenue sewer of three million gallons per day. Based upon this average flow and the likely nine-day period, during which sewage was discharged, the total estimated volume of waste discharged to Warm Creek and the Santa Ana River was 27 million gallons.
 - D) On February 26, 1998 EVWD staff received notice from a San Bernardino County Flood Control District staff member of a water "boil" beneath the Sterling Avenue Bridge. EVWD field staff failed to adequately investigate both their sewer and water utility facilities in the vicinity of the Sterling Avenue Bridge for the source of the reported leak. Consequently, the break in the sewer pipeline was not discovered until March 4, 1998.
 - E) Once the sewage spill was discovered on March 4, 1998, EVWD staff devised and executed a plan to bypass Sterling Avenue sewage flows around the section of damaged sewer pipeline to facilitate its repair. EVWD's initial response to the spill incident was slowed because EVWD did not have emergency response procedures for this type of incident.

- F) EVWD's lack of spill response preparedness was further demonstrated on the morning of March 5, 1998, when an estimated additional 90,000 gallons of sewage were discharged into Warm Creek because the capacity of the bypass pump was exceeded. EVWD staff removed the sewer plug (installed to stop sewage from being discharged to Warm Creek), and allowed sewage to flow into the Creek until the Sterling Avenue sewer flows diminished to a level that could be successfully handled by the bypass pump.
- G) On March 5, EVWD staff placed signs along both sides of the embankment of Warm Creek downstream of Sterling Avenue, warning the citizenry against swimming in and drinking Creek water. However, EVWD staff failed to perform any cleanup of the substantial amount of easily observable sewage debris (including fecal matter) left from the spill along the Creek bottom. A rainstorm during the early morning hours of March 6, 1998 washed this debris downstream into the Santa Ana River, eliminating any opportunity to clean up the sewage debris.
- H) The Orange County Health Care Agency, in conjunction with the Orange County Sanitation District, monitors the bacterial quality of Orange County beach waters in order assure the safety of the beaches for recreational activities. On March 5, 1998, monitoring data showed significantly high total and fecal coliform bacteria levels in the surf zone of beaches adjacent to the mouth of the Santa Ana River, which indicated contamination of Santa Ana River flows from a sewage source. Due to the significant volume of sewage discharged to the Santa Ana River from the EVWD spill and the timing of the high coliform bacterial counts, Orange County Health Care Agency officials decided to close 1.5 miles of beach from March 5 until March 14, 1998.
6. EVWD has taken a number of steps to reduce the potential for future sewage spills to the Santa Ana River. EVWD has undertaken an engineering study to assess the degree to which other sewer pipelines within their service area are vulnerable to the same type of failure as was experienced by the Sterling Avenue sewer. EVWD intends to construct sewer pipeline protection structures where deficiencies are noted from the study. EVWD has embarked on a thorough training program for their staff, and are developing a comprehensive emergency spill response procedure. EVWD has committed to convening a regional sewage spill response seminar available for attendance by staff from municipal sewerage agencies and sanitary districts.

7. Pursuant to Water Code Section 13385, those who violate Water Code Section 13376 are liable civilly. As provided by Water Code Section 13385, (c) (2) the Board can administratively assess a civil liability of an amount not to exceed the sum of both of the following:
 - A) Ten thousand dollars (\$10,000) for each day in which the violation occurs; and,
 - B) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
8. The maximum liability for the violations cited above is \$270,080,000 that is comprised of:
 - A) \$90,000 for nine days of violation; and
 - B) \$269,990,000 for the estimated 26,999,000 gallons (27 million gallons minus 1,000 gallons) that was not susceptible to cleanup.
9. Section 13385 (e) specifies factors that the Board shall consider in establishing the amount of civil liability. Based on consideration of those factors, the Executive Officer finds that civil liability should be imposed on East Valley Water District by the Board in the amount of \$50,000 for violations cited above. The Executive Officer proposes a reduction of \$25,000 of this penalty, however, in recognition of EVWD's efforts expended to date to train their staff in emergency response, and to investigate other similarly vulnerable areas of their sewer utility system and develop a corrective plan of action. The proposed reduction is also contingent upon EVWD convening a multi-agency emergency response planning seminar to be held no later than October 9, 1998.

WAIVER OF HEARING

You may waive your right to a hearing. If you waive your right to a hearing, please sign the attached waiver and return it together with a cashier's check made payable to the State Water Resources Control Board in the amount of the civil liability proposed in paragraph 9 above. Send the check and waiver to:

Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3339

If you have any questions regarding this complaint, please contact Gerard J. Thibeault at (909) 782-3284, Stephen D. Mayville at (909) 782-4992, Mark Adelson at (909) 782-3234, or contact the Regional Board's staff counsel, Ted Cobb, at (916) 657-0406.

Date

Gerard J. Thibeault
Executive Officer